

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

**JEFFERY CABE, SEAN FREY, ANITA POTEETE,
RONDA ROHDE, ROBERT SNELL,
JEFFREY MOORE, ELISA TINNELL,
MICHAEL KAP, KAREN ROBERTSON,
JIM WESTRA, JOHNNY RUIZ, ARCHIE ROBINSON,
DECODA KEYS and NORMA MOODY, Each Individually
and on Behalf of All Others Similarly Situated**

PLAINTIFFS

vs.

No. 1:24-cv-1316

**EVERGREEN PACKAGING LLC,
and PACTIV EVERGREEN INC.**

DEFENDANTS

**PLAINTIFFS' OPPOSED MOTION FOR CONDITIONAL CERTIFICATION,
FOR APPROVAL AND DISTRIBUTION OF NOTICE, AND
FOR DISCLOSURE OF CONTACT INFORMATION**

Plaintiffs Jeffery Cabe, Sean Frey, Ronda Rohde, Anita Poteete, Robert Snell, Jeffrey Moore, Elisa Tinnell, Michael Kap, Karen Roberston, Jim Westra, Johnny Ruiz, Archie Robinson, Decoda Keys and Norma Moody ("Plaintiffs"), each individually and on behalf of all others similarly situated, by and through their attorney Josh Sanford of Sanford Law Firm, PLLC, for their Opposed Motion for Conditional Certification, for Approval and Distribution of Notice, and for Disclosure of Contact Information, states and alleges as follows:

1. Plaintiffs brought this suit on behalf of certain former and current employees of Defendants Evergreen Packaging LLC, and Pactiv Evergreen Inc. (collectively "Defendant" or "Defendants"), to recover wages and other damages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. (the "FLSA").

2. Plaintiffs brought this action as a collective action pursuant to 29 U.S.C. § 216(b). Plaintiffs ask this Court to conditionally certify the following collective:

All hourly paid production workers who recorded at least 39 hours in any week since February 15, 2021, except those who joined *Wallace v. Evergreen Packaging, LLC*, Case No. 4:22-cv-337-KGB (E.D. Ark.) or *Woodall v. Evergreen Packaging, LLC*, Case No. 1:23-cv-459 (N.D. Ill.).¹

3. Section 216(b) of the FLSA provides that “[a]n action . . . may be maintained against any employer . . . by any one or more employees for and [on] behalf himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b).

4. Plaintiff hereby moves the Court to conditionally certify this lawsuit as a collective action for the purpose of providing notice of the action to members of the collective.

5. Plaintiff and the members of the collective are sufficiently similarly situated that conditional certification of the proposed collective is appropriate, as explained in the Brief filed herewith.

6. The policy which gave rise to the violation in this case applies to all members of the collective. Therefore, they are similarly situated as that term is used in the FLSA.

7. Plaintiff requests that this Court permit her to distribute the attached Notice to potential opt-in Plaintiffs via U.S. mail and email, and that this Court permit Plaintiffs to distribute a reminder email or postcard thirty days after the date of mailing.

8. Attached as Exhibits 1 and 2, respectively, are the Notice and Consent to

¹ The opt-in period in the *Wallace* case in the Eastern District of Arkansas ended on August 3, 2023, and the opt-in period in the *Woodall* case in this district will end on June 17, 2024. Accordingly, there is no current conditionally certified group for putative opt-in Plaintiffs to join and no first-to-file concerns regarding the composition of the collective.

Join proposed by Plaintiffs for distribution in this case. Attached as Exhibit 3 is the email text proposed by Plaintiffs for electronic distribution in this case. The Notices and Consents to Join make no comment on the merits of the case. The Notices are narrowly drawn to notify potential collective members of the pending litigation, the composition of the collective, and their right to “opt in” to the litigation.

9. Plaintiffs also request that the Court grant counsel a period of 90 days—beginning on the date on which Defendants fully and completely release the potential collective members’ contact information to Plaintiffs’ counsel—during which to distribute the Notice and file opt-in Plaintiffs’ Consent forms with this Court.

10. To facilitate the sending of the Notice and Consent forms, Plaintiffs also respectfully ask this Court to enter an Order directing Defendants to provide the names, last known addresses, and last known email addresses of potential opt-in plaintiffs in an electronically manipulable format such as Excel (.xls) no later than 7 days after the date of the entry of the Order.

11. Plaintiffs incorporate their Brief in Support of the current Motion, filed concurrently with this Motion.

12. In support of the current Motion, Plaintiffs incorporate the following exhibits:

- Ex. 1: Proposed Notice of Right to Join Lawsuit (“*Notice*”);
- Ex. 2: Proposed Consent to Join Collective Action (“*Consent to Join*”);
- Ex. 3: Proposed Text of Electronic Transmissions (“*Electronic Transmissions*”);
- Ex. 4: Proposed Reminder Postcard (“*Postcard*”);
- Ex. 5: Declaration of Attorney Josh Sanford;
- Ex. 6: Declaration of Jeffery Cabe;
- Ex. 7: Declaration of Sean Frey;
- Ex. 8: Declaration of Anita Poteete;
- Ex. 9: Declaration of Ronda Rohde;
- Ex. 10: Declaration of Robert Snell;
- Ex. 11: Declaration of Jeffery Moore;
- Ex. 12: Declaration of Elisa Tinnell;

Ex. 13: Declaration of Michael Kap;
Ex. 14: Declaration of Karen Roberston;
Ex. 15: Declaration of Jim Westra;
Ex. 16: Declaration of Johnny Ruiz;
Ex. 17: Declaration of Archie Robinson;
Ex. 18: Declaration of Decoda Keys; and
Ex. 19: Declaration of Norma Moody.

WHEREFORE, premises considered, Plaintiffs pray that the Court:

- A. Conditionally certify the collective proposed by Plaintiffs;
- B. Approve of the use of U.S. Mail and email to distribute Plaintiffs' proposed Notice and Consent to Join;
- C. Grant approval to the form and content of Exhibits 1 - 4 for use in providing notice to the collective members via the methods described in this Motion;
- D. Order Defendants to produce the names and last known mailing addresses and email addresses of each potential opt-in Plaintiff in an electronically importable and malleable electronic format, such as Excel, within seven days after this Court's Order is entered;
- E. Allow for an opt-in period of 90 days, to begin seven days after the day that Defendants produce the names and contact information for the putative collective members, in which putative collective members may submit their Consents to Join this lawsuit as opt-in plaintiffs;
- F. Grant Plaintiffs leave to send a follow-up reminder via email or U.S. Mail, beginning 30 days after the opt-in period begins, to potential plaintiffs who have not responded to the Notice; and
- G. Award costs and a reasonable attorney's fee and grant all other relief to which Plaintiffs may be entitled, whether specifically prayed for or not.

Respectfully submitted,

**JEFFERY CABE, SEAN FREY, ANITA
POTEETE, RONDA ROHDE, ROBERT
SHELL, JEFFREY MOORE, ELISA
TINNELL, MICHAEL KAP, KAREN
ROBERTSON, JIM WESTRA,
JOHNNY RUIZ, ARCHIE ROBINSON,
DECODA KEYS and NORMA MOODY,
Each Individually and on Behalf of
Others Similarly Situated, PLAINTIFFS**

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CERTIFICATE OF SERVICE

I, Josh Sanford, hereby certify that on the date imprinted by the CM/ECF system, a true and correct copy of the foregoing MOTION was electronically filed via the CM/ECF system, which will provide notice to the following attorneys of record:

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/s/ Josh Sanford
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